



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED: NOV 2 1981

RE: NIAGARA ORCHARD, INC. (82-TLC-1)

THIS IS A DECISION IN RESPONSE TO A REQUEST BY NIAGARA ORCHARD, INC., FOR EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. SECTION 655.212 OF A DECISION FINDING IT TO BE INELIGIBLE FOR TEMPORARY LABOR CERTIFICATION FOR THE 1982 HARVEST SEASON. THE EMPLOYER FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATION, ON JULY 14, 1981: FOR FORTY-SEVEN ALIEN WORKERS TO FILL POSITIONS AS TEMPORARY HARVEST WORKERS IN NEW YORK. THE PERIOD OF EMPLOYMENT WAS LISTED AS SEPTEMBER 10, 1981 TO NOVEMBER 15, 1981. ON AUGUST 21, 1981, THE REGIONAL ADMINISTRATOR (RA) GRANTED CERTIFICATION FOR THE FORTY-SEVEN WORKERS, ADVISING THAT CONSISTENT WITH THE ACT AND REGULATIONS, THE EMPLOYER SHOULD CONSIDER FOR EMPLOYMENT ALL U.S. WORKERS WHO ARE REFERRED AND SHOULD NOT REFUSE TO HIRE ANY AVAILABLE WORKER FOR OTHER THAN JOB RELATED REASONS UNTIL 50% OF THE CONTRACT PERIOD IS COMPLETED.

ON SEPTEMBER 11, 1981, THE EMPLOYER INFORMED THE DEPARTMENT OF LABOR THAT ON THE ADVICE OF HIS ATTORNEY, IT DECLINED TO HIRE FIVE PUERTO RICAN WORKERS SCHEDULED ON ITS CLEARANCE ORDER DUE TO "STILL-PENDING 1977 LAW SUITS."

ON SEPTEMBER 22, 1981, THE RA INFORMED THE EMPLOYER, THAT DUE TO ITS REFUSAL TO ACCEPT THE QUALIFIED U.S. WORKERS, IT WOULD BE FOUND INELIGIBLE TO APPLY FOR TEMPORARY LABOR CERTIFICATION DURING THE 1982 HARVEST SEASON. THE EMPLOYER APPEALED THIS DECISION ON OCTOBER 12, 1981. THE APPEAL FILE WAS RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGES, U.S. DEPARTMENT OF LABOR, ON OCTOBER 27, 1981.

20 C.F.R. 655.212(a) AUTHORIZES A HEARING OFFICER, IN ADMINISTRATIVE-JUDICIAL REVIEW, TO CONSIDER ONLY THE "LEGAL SUFFICIENCY" OF THE RECORD UPON WHICH THE DENIAL OF LABOR CERTIFICATION IS BASED.

THE RECORD IN THIS CASE IS SUFFICIENT FOR A FINDING THAT U.S. WORKERS WERE REFERRED TO THE EMPLOYER FOR THE 1981 HARVEST, AND THAT THE EMPLOYER REFUSED TO HIRE THEM, IN VIOLATION OF 20 C.F.R. 655.203. THEREFORE THE DECISION OF THE RA IN THIS MATTER MUST BE AFFIRMED.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR ON THIS MATTER. FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE IN YOUR GEOGRAPHICAL AREA PURSUANT TO 8 C.F.R. SECTION 214.2(b)(j)(i). THIS DECISION IS BEING TRANSMITTED TO JAMES A. WARE, THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING, AND DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE.

ROY P. SMITH
ADMINISTRATIVE LAW JUDGE